

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID DOUGLAS, SR.,

Plaintiff,

v.

9:11-CV-1353
(GTS/RFT)

PERRARA, Corrr. Officer, Great Meadow C.F.;
LAWRENCE, Corr. Officer, Great Meadow C.F.;
WHITTIER, Corr. Officer, Great Meadow C.F.;
MULLIGAN, Corr. Officer, Great Meadow C.F.;
DELUCA, Corr. Sergeant, Great Meadow C.F.; and
RUSSEL, Deputy Superintendent, Great Meadow C.F,

Defendants.

APPEARANCES:

OF COUNSEL:

DAVID DOUGLAS, SR.
Plaintiff, *Pro Se*
118 Russell Avenue
Liverpool, New York 13088

HON. ERIC T. SCHNEIDERMAN
Attorney General for the State of New York
Counsel for Defendants
The Capitol
Albany, New York 12224

COLLEEN D. GALLIGAN, ESQ.
Assistant Attorney General

GLENN T. SUDDABY, United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by David Douglas, Sr., (“Plaintiff”) against the six above-captioned New York State correctional employees, are the following: (1) Defendants’ motion for partial summary judgment (requesting the dismissal of Plaintiff’s claims against Defendant Russell, and his claims against the remaining Defendants in their official capacities); and (2) United States Magistrate Judge Randolph F. Treece’s Report-

Recommendation recommending that Defendants' motion be granted. (Dkt. Nos. 70, 80.)

Neither party filed an objection to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.) After carefully reviewing the relevant filings in this action, the Court can find no clear error in the Report-Recommendation: Magistrate Judge Treece employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Court accepts and adopts the Report-Recommendation for the reasons stated therein. (Dkt. No. 80.)

ACCORDINGLY, it is

ORDERED that Magistrate Judge Treece's Report-Recommendation (Dkt. No. 80) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Defendants' motion for partial summary judgment (Dkt. No. 70) is **GRANTED**; and it is further

ORDERED that the following claims are **DISMISSED** from this action: (a) all claims asserted against Defendant Russell, and (b) all claims asserted against Defendants in their official capacities only. The Clerk is directed to terminate Defendant Russell from this action; and it is further

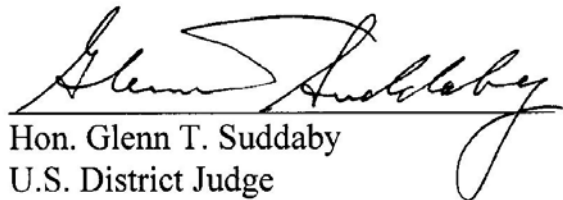
ORDERED that the following claims **REMAIN PENDING** in this action: (a) Plaintiff's claim that Defendants Whittier, Mulligan, Perrara and/or Lawrence subjected him to inadequate prison conditions by depriving him of meals for approximately five consecutive days in December 2009, in violation of the Eighth Amendment; (b) Plaintiff's claim that Defendants Whittier, Mulligan, Perrara and Lawrence used excessive force against him, and that Defendant Deluca failed to protect him from the use of that excessive force, in violation of the Eighth

Amendment and New York State common law; and (c) Plaintiff's claim that Defendant DeLuca was deliberately indifferent to Plaintiff's serious medical needs (following the assaults) in violation of the Eighth Amendment; and it is further

ORDERED that Pro Bono Counsel be appointed for the Plaintiff for purposes of trial only; any appeal shall remain the responsibility of the plaintiff alone unless a motion for appointment of counsel for an appeal is granted; and it is further

ORDERED that upon assignment of Pro Bono Counsel, a final pretrial conference with counsel will be scheduled in this action before the undersigned, at which time the Court will schedule a jury trial for Plaintiff's remaining claims as set forth above against Defendants Whittier, Mulligan, Perrara, Lawrence and DeLuca. Counsel are directed to appear at the final pretrial conference with settlement authority from the parties.

Dated: September 27, 2013
Syracuse, New York


Hon. Glenn T. Suddaby
U.S. District Judge